

JUN 14 2006 *PS*

**MARY L.M. MORAN**  
**CLERK OF COURT**

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6 Attorney for Plaintiff  
7 ELIZABETH TOLOSA-TAHA

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF GUAM  
10

11 ELIZABETH TOLOSA-TAHA, ) CIVIL CASE NO. 06-00002  
12 )  
13 Plaintiff, ) MOTION TO AMEND THE  
14 ) PLEADINGS TO NAME PARTY  
15 vs. ) PLAINTIFF, ELIZABETH TOLOSA-  
16 ) TAHA IN HER CAPACITY AS  
17 MILAROSE NILOOBAN, NILO ) REPRESENTATIVE OF THE  
18 NILOOBAN, et. al., ) ESTATE OF EDGAR G.M. TOLOSA  
19 ) PURSUANT TO RULE 7.1(A);  
20 ) CERTIFICATE OF SERVICE  
21 Defendants. )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

23 COMES NOW, Plaintiff, ELIZABETH TOLOSA-TAHA, and pursuant to Title  
24 28, Judiciary and Judicial Procedure, Section 1332 (a) (1) and (2) Federal Rules of Civil  
25 Procedure, Rule, Local Rule, 7.1 and CCP Section 377.60, moves this Court for an order  
26 to amend the pleadings to include party plaintiff Elizabeth Tolosa-Taha in her capacity as  
27 representative of the estate of Edgar G.M. Tolosa.  
28

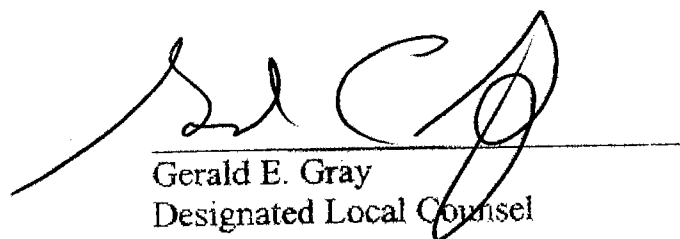
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5 In support of this Motion, plaintiff relies on her brief filed simultaneously  
6 herewith.

7 Dated this 29<sup>th</sup> day of May 2006.  
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10

11 Respectfully submitted,

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14 Edna V. Wenning  
15 California State Bar No. 130377  
16 Admitted Pro Hac Vice  
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21 Gerald E. Gray  
22 Designated Local Counsel  
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### INTRODUCTION/BACKGROUND

On or about January, 2006, plaintiff filed her Complaint to Quiet Title in this Court. Counsel for defendants Mila and Nilo Nilooban filed their answer on April 6, 2006.

Edgar G.M. Tolosa died intestate on November 1, 1999 in San Francisco, California. Plaintiff Elizabeth Tolosa-Taha is the adopted daughter and sole heir of decedent Edgar Tolosa. Defendants Milarose and Bienvenido Nilooban, tenants of the property known as 247 J.L. Blaz, Dededo, Guam 86912, owned in fee simple by decedent Edgar Tolosa. Defendants Milarose and Nilo Nilooban continued to pay their monthly rental of \$279.19 per month to the Bank of Hawaii, pursuant to agreement with decedent, until May 9, 2002 after the Bank of Hawaii declared that mortgage loan number 014447-9 secured by the subject property, had been paid in full. Since May 9, 2002 defendants have not paid their rents and have taken advantage of the absence of decedent's heir in the District of Guam. Based on information and belief, defendants Nilooban are citizens of the Republic of the Philippines and a resident of Guam, U.S. territory while plaintiff Elizabeth Taha is a resident of the State of California. Diversity jurisdiction is present and the amount in controversy exceeds \$75,000.00. Comparable property values in the area range from \$79,900 to 103,000 and above.

Plaintiff will file a request for judicial notice of the pleadings in the case entitled *Elizabeth Taha, individually and as representative of the Estate of Edgar Tolosa, Case No. 832816-8*, a wrongful death action filed in 2000 against the City of Oakland, County of Alameda, et. al. Said lawsuit identified plaintiff Elizabeth Taha as the sole surviving daughter of decedent, Edgar Tolosa, and decedent's sole heir and representative of his estate. Settlement of the wrongful death action brought by plaintiff as sole heir and representative of deceased Edgar Tolosa was completed in November 2001. The case was dismissed after settlement on January 30, 2002. Not one defendant in the wrongful

1 death action questioned plaintiff's standing to file a wrongful death claim as the sole heir  
2 and representative of the estate of Edgar Tolosa.

3  
4 MEMORANDUM OF POINTS AND AUTHORITIES

5 I.

6  
7 THE STATE OF CALIFORNIA WRONGFUL DEATH STATUTE GAVE  
8 STANDING TO PLAINTIFF ELIZABETH TOLOSA-TAHA AS SOLE  
9 HEIR AND REPRESENTATIVE OF THE ESTATE OF EDGAR TOLOSA

10 Code of Civil Procedure, Section 377.60 provides:

11 "A cause of action for the death of a person caused by the wrongful act or  
12 neglect of another may be asserted by any of the following persons or by the  
13 decedent's personal representative on their behalf:

14 (a) The decedent's surviving spouse, domestic partner, children, and issue of  
15 deceased children, or, if there is no surviving issue of the decedent, the  
16 persons, including the surviving spouse or domestic partner, who would be  
17 entitled to the property of the decedent by intestate succession."

18 The Court in *Jose Chavez vs. Carpenter*, (2001) 91 Cal.App. 4<sup>th</sup> 1433, the Court  
19 declared:

20  
21 "Standing in wrongful death actions is now governed by Code of  
22 Civil Procedure Section 377.60. [2] As relevant here, that statute  
23 permits a cause of action for wrongful death to be asserted by:  
24 "(a) The decedent's surviving spouse, children, and issue of  
25 deceased children, or, if there is no surviving issue of the  
26 decedent, the persons, including the surviving spouse, who  
27 would be entitled to the property of the decedent by intestate  
28 succession. ..."

1 It is undisputed that plaintiff Elizabeth Tolosa-Taha was adopted by decedent as  
2 evidenced by the certificate of adoption and amended birth certificate. During the  
3 pendency of the wrongful death action in California, no one questioned plaintiff's status  
4 as the sole heir and representative of the estate of Edgar G. M. Tolosa.

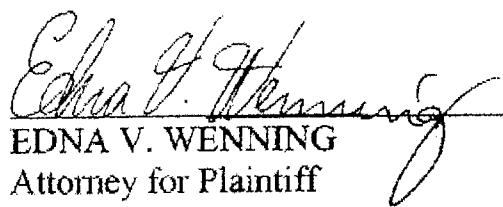
5 The first subdivision of the wrongful death statute gives standing to those persons  
6 "who would be entitled to the property of the decedent by intestate succession," but only  
7 "if there is no surviving issue of the decedent." Code Civ. Pro., Section 377.90 (a).

8 There is no question that plaintiff is the sole surviving issue of decedent and a  
9 representative of his estate, hence she has standing to file the complaint to quiet title.  
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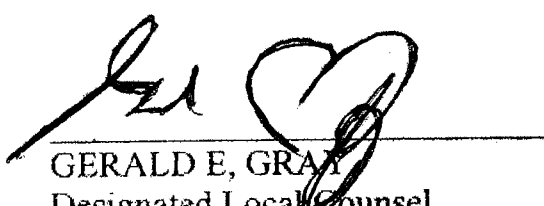
11 May 29, 2006

Respectfully submitted

12  
13 5/29/06  
14 Dated

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EDNA V. WENNING  
Attorney for Plaintiff  
Elizabeth Tolosa-Taha

16  
17  
18 5/30/06  
19 Dated

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GERALD E. GRAY  
Designated Local Counsel  
Attorney for Plaintiff  
Elizabeth Tolosa-Taha

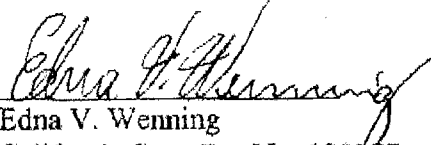
### CERTIFICATE OF SERVICE

I hereby certify that on May , 2006 I have served a copy of the following document:

I. Motion to Amend the Pleadings to Name Party Plaintiff Elizaveth Tolosa-Taha in her Capacity as Representative of the Estate of G.M. Tolosa; Certificate of Service addressed to counsel of record, by either delivering, faxing and/or mailing a copy of same to the following:

Louie J. Yanza  
Maher.Yanza.Flynn.Timblin, LLP  
Governor Joseph Flores Building  
Hagatna, Guam 96910

This day of May , 2006

  
Edna V. Wenning  
California State Bar No. 130377  
Attorney for Plaintiff

289 Norumbega Drive  
Monrovia, California 91016  
(626) 359-3219